

AMENDED IN SENATE MARCH 26, 2012

**SENATE BILL**

**No. 1246**

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**Introduced by Senator Hernandez**

February 23, 2012

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An act to amend ~~Section~~ *Sections 1279 and 1280.3* of, and to add Section 1279.4 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1246, as amended, Hernandez. Health facilities: staffing.

Existing law regulates general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. Existing law required, by January 1, 2002, the State Department of Public Health to adopt regulations establishing the minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit for general acute care hospitals, acute psychiatric hospitals, and special hospitals. Existing law requires these ratios to constitute the minimum number of registered and licensed nurses that shall be allocated and additional staff to be assigned in accordance with a documented patient classification system for determining nursing requirements.

Existing law *requires the department to promulgate regulations, including specified criteria, for the purpose of assessing an administrative penalty against general acute care hospitals, acute psychiatric hospitals, and special hospitals.* Existing law authorizes the department to assess a licensee of ~~a general acute care hospital, acute psychiatric hospital, or special hospital~~ *these hospitals* an administrative penalty, as specified, for a violation of existing law or for a deficiency constituting an immediate jeopardy violation, except that no penalty

shall be assessed if it is a minor violation. Existing law requires that a person who willfully or repeatedly violates a rule or regulation adopted pursuant to these provisions is guilty of a misdemeanor.

*This bill would eliminate the requirement that the department to promulgate regulations to assess an administrative penalty and instead would require the department to use the specified criteria to determine the amount of the administrative penalty.*

This bill would require general acute care hospitals, acute psychiatric hospitals, and special hospitals to maintain a patient classification system, as defined, that is reviewed and updated annually. This bill would provide that a failure to maintain and annually update a patient classification system, or failure to comply with a patient classification system, may be subject to an administrative penalty. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law requires that every health facility for which a license or special permit has been issued shall be periodically inspected by the State Department of Public Health, or by another governmental entity under contract with the department. Existing law requires the department to inspect *the facility* for compliance with provisions of state law and regulations during a state periodic inspection, or at the same time as a federal periodic inspection.

This bill would require the inspections to include review of compliance with state requirements for staffing, including the regulations adopted by the department establishing nurse-to-patient ~~ratios~~ *ratios* and regulations regarding patient classification systems.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1279 of the Health and Safety Code is
- 2 amended to read:
- 3 1279. (a) Every health facility for which a license or special
- 4 permit has been issued shall be periodically inspected by the

1 department, or by another governmental entity under contract with  
2 the department. The frequency of inspections shall vary, depending  
3 upon the type and complexity of the health facility or special  
4 service to be inspected, unless otherwise specified by state or  
5 federal law or regulation. The inspection shall include participation  
6 by the California Medical Association consistent with the manner  
7 in which it participated in inspections, as provided in Section 1282  
8 prior to September 15, 1992.

9 (b) Except as provided in subdivision (c), inspections shall be  
10 conducted no less than once every two years and as often as  
11 necessary to ensure the quality of care being provided.

12 (c) For a health facility specified in subdivision (a), (b), or (f)  
13 of Section 1250, inspections shall be conducted no less than once  
14 every three years, and as often as necessary to ensure the quality  
15 of care being provided.

16 (d) During the inspection, the representative or representatives  
17 shall offer such advice and assistance to the health facility as they  
18 deem appropriate.

19 (e) For acute care hospitals of 100 beds or more, the inspection  
20 team shall include at least a physician, registered nurse, and persons  
21 experienced in hospital administration and sanitary inspections.  
22 During the inspection, the team shall offer advice and assistance  
23 to the hospital as it deems appropriate.

24 (f) The department shall ensure that a periodic inspection  
25 conducted pursuant to this section is not announced in advance of  
26 the date of inspection. An inspection may be conducted jointly  
27 with inspections by entities specified in Section 1282. However,  
28 if the department conducts an inspection jointly with an entity  
29 specified in Section 1282 that provides notice in advance of the  
30 periodic inspection, the department shall conduct an additional  
31 periodic inspection that is not announced or noticed to the health  
32 facility.

33 (g) Notwithstanding any other provision of law, the department  
34 shall inspect *the facility* for compliance with provisions of state  
35 law and regulations during a state periodic inspection or at the  
36 same time as a federal periodic inspection, including, but not  
37 limited to, an inspection required under this section. Inspections  
38 shall include review of compliance with state requirements for  
39 staffing, including regulations adopted pursuant to Section 1276.4  
40 and regulations regarding patient classification systems. If the

1 department inspects *the facility* for compliance with state law and  
2 regulations at the same time as a federal periodic inspection, the  
3 inspection shall be done consistent with the guidance of the federal  
4 Centers for Medicare and Medicaid Services for the federal portion  
5 of the inspection.

6 (h) The department shall emphasize consistency across the state  
7 and its district offices when conducting licensing and certification  
8 surveys and complaint investigations, including the selection of  
9 state or federal enforcement remedies in accordance with Section  
10 1423. The department may issue federal deficiencies and  
11 recommend federal enforcement actions in those circumstances  
12 where they provide more rigorous enforcement action.

13 SEC. 2. Section 1279.4 is added to the Health and Safety Code,  
14 to read:

15 1279.4. (a) (1) A health facility licensed pursuant to  
16 subdivision (a), (b), or (f) of Section 1250 shall maintain a patient  
17 classification system that shall be reviewed and updated *at least*  
18 annually, *including a review of its reliability, by a review*  
19 *committee. The review committee shall be appointed by the nursing*  
20 *administration, subject to the requirements and limitations of*  
21 *paragraph (2). The review committee shall determine whether the*  
22 *system accurately measures patient care needs.*

23 (2) *At least one-half of the committee shall be registered nurses*  
24 *who provide direct patient care. If the registered nurses are*  
25 *represented by a collective bargaining agent, the registered nurses*  
26 *shall be selected by the agent.*

27 (b) Failure to maintain and annually update a patient  
28 classification system shall constitute an immediate jeopardy of  
29 patients for the purposes of Sections 1280.1 or 1280.3.

30 (c) Failure to comply with a patient classification system shall  
31 constitute a violation subject to subdivision (b) of Section 1280.3.

32 (d) For purposes of this section, a “patient classification system”  
33 means a method for establishing staffing requirements by unit,  
34 patient, and shift that includes all of the following:

35 (1) A method to predict nursing care requirements of individual  
36 patients.

37 (2) An established method by which the amount of nursing care  
38 needed for each category of patient is validated for each unit and  
39 for each shift.

1 (3) An established method to discern trends and patterns of  
2 nursing care delivery by each unit, each shift, and each level of  
3 licensed and unlicensed staff.

4 (4) A mechanism by which the accuracy of the nursing care  
5 validation method described in paragraph (2) can be tested. This  
6 method will address the amount of nursing care needed, by patient  
7 category and pattern of care delivery, on an annual basis, or more  
8 frequently, if warranted by the changes in patient populations, skill  
9 level of the staff, or patient care delivery model.

10 (5) A method to determine staff resource allocations based on  
11 nursing care requirements for each shift and each unit.

12 (6) A method by which the hospital validates the reliability of  
13 the patient classification system for each unit and each shift.

14 *SEC. 3. Section 1280.3 of the Health and Safety Code is*  
15 *amended to read:*

16 1280.3. (a) ~~Commencing on the effective date of the~~  
17 ~~regulations adopted pursuant to this section, the~~ *The* director may  
18 assess an administrative penalty against a licensee of a health  
19 facility licensed under subdivision (a), (b), or (f) of Section 1250  
20 for a deficiency constituting an immediate jeopardy violation as  
21 determined by the department up to a maximum of seventy-five  
22 thousand dollars (\$75,000) for the first administrative penalty, up  
23 to one hundred thousand dollars (\$100,000) for the second  
24 subsequent administrative penalty, and up to one hundred  
25 twenty-five thousand dollars (\$125,000) for the third and every  
26 subsequent violation. An administrative penalty issued after three  
27 years from the date of the last issued immediate jeopardy violation  
28 shall be considered a first administrative penalty so long as the  
29 facility has not received additional immediate jeopardy violations  
30 and is found by the department to be in substantial compliance  
31 with all state and federal licensing laws and regulations. The  
32 department shall have full discretion to consider all factors when  
33 determining the amount of an administrative penalty pursuant to  
34 this section.

35 (b) Except as provided in subdivision (c), for a violation of this  
36 chapter or the rules and regulations promulgated thereunder that  
37 does not constitute a violation of subdivision (a), the department  
38 may assess an administrative penalty in an amount of up to  
39 twenty-five thousand dollars (\$25,000) per violation. This  
40 subdivision shall also apply to violation of regulations set forth in

Article 3 (commencing with Section 127400) of Chapter 2 of Part 2 of Division 107 or the rules and regulations promulgated thereunder.

The department shall ~~promulgate regulations establishing the criteria to assess~~ *use the following criteria to determine the amount of* an administrative penalty against a health facility licensed pursuant to subdivisions (a), (b), or (f) of Section 1250. The criteria shall include, but need not be limited to, the following:

- (1) The patient's physical and mental condition.
- (2) The probability and severity of the risk that the violation presents to the patient.
- (3) The actual financial harm to patients, if any.
- (4) The nature, scope, and severity of the violation.
- (5) The facility's history of compliance with related state and federal statutes and regulations.
- (6) Factors beyond the facility's control that restrict the facility's ability to comply with this chapter or the rules and regulations promulgated thereunder.
- (7) The demonstrated willfulness of the violation.
- (8) The extent to which the facility detected the violation and took steps to immediately correct the violation and prevent the violation from recurring.
- (9) *Compliance with staffing requirements of state and federal law and regulation, including, but not limited to, the patient classification system and nurse-to-patient ratios.*
- (c) The department shall not assess an administrative penalty for minor violations.
- ~~(d) The regulations shall not change the definition of immediate jeopardy as established in this section.~~
- ~~(e) The regulations shall apply only to incidents occurring on or after the effective date of the regulations.~~
- ~~(f)~~
- (d) If the licensee disputes a determination by the department regarding the alleged deficiency or alleged failure to correct a deficiency, or regarding the reasonableness of the proposed deadline for correction or the amount of the penalty, the licensee may, within 10 working days, request a hearing pursuant to Section 131071. Penalties shall be paid when all appeals have been exhausted and the department's position has been upheld.

~~(g)~~

1     (e) For purposes of this section, “immediate jeopardy” means  
2     a situation in which the licensee’s noncompliance with one or more  
3     requirements of licensure has caused, or is likely to cause, serious  
4     injury or death to the patient.

5     ~~(h)~~

6     (f) In enforcing subdivision (a) the department shall take into  
7     consideration the special circumstances of small and rural hospitals,  
8     as defined in Section 124840, in order to protect access to quality  
9     care in those hospitals.

10    ~~SEC. 3.~~

11    SEC. 4. No reimbursement is required by this act pursuant to  
12    Section 6 of Article XIII B of the California Constitution because  
13    the only costs that may be incurred by a local agency or school  
14    district will be incurred because this act creates a new crime or  
15    infraction, eliminates a crime or infraction, or changes the penalty  
16    for a crime or infraction, within the meaning of Section 17556 of  
17    the Government Code, or changes the definition of a crime within  
18    the meaning of Section 6 of Article XIII B of the California  
19    Constitution.